

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

MCKESSON CORPORATION, a Delaware corporation,

CASE NO. CV07-5715 WDB

*Related to Case No. 4:08-cv-02850-WDB*

Plaintiff,  
v.

FAMILYMEDS GROUP, INC., f/k/a  
DRUGMAX, INC., a Nevada corporation.

**STIPULATION TO STAY OF  
PROCEEDINGS; ORDER THEREON**

Defendant.

FAMILYMEDS GROUP, INC., f/k/a  
DRUGMAX, INC., a Nevada corporation.

**Counterclaimant.**

v.

MCKESSON CORPORATION, a Delaware corporation.

Complaint filed: Nov. 9, 2007  
Counterclaim filed: Dec. 17, 2007  
Cross-Complaint Filed: Dec. 17, 2007  
Trial date: none set

This Stipulation to Stay of Proceedings; Order Thereon (this "Stipulation") is entered into by and between Familymeds, Inc., a Connecticut corporation and Familymeds Group, Inc. a Nevada corporation, f/k/a Drugmax, Inc., a Nevada corporation (collectively, "**Familymeds**") on the one hand, and McKesson Corporation, a Delaware corporation ("**McKesson**") and D&K Healthcare Resources LLC, a Delaware limited liability company, f/k/a D&K Healthcare Resources, Inc., a Delaware corporation (collectively, "**Defendants**") on the other (collectively, the "**Parties**," and individually, each a "**Party**"). The Parties each hereby stipulate and agree as follows:

## **RECITALS**

1. On November 9, 2007, McKesson filed its Complaint for Breach of Contract in the above-referenced action (this "First Action").

1           2. On December 17, 2007, Familiy whole filed in the First Action their Counterclaim for  
2 Specific Performance of Contract and Accounting; Cross-Complaint for Accounting (the  
3 "Counterclaim").

4           3. On June 6, 2008, Familiy whole filed its Complaint for Specific Performance of  
5 Contract and Accounting in the above-referenced Court which was assigned Case Number 4:08-cv-  
6 02850-WDB (the "Second Action").

7           4. On June 18, 2008, the Court entered its Order deeming this Second Action related to  
8 the First Action.

9           5. On August 20, 2008, McKesson filed in the Second Action its Motion to Dismiss  
10 Complaint Pursuant to FRCP Rules 12(b)(1) and 12(b)(6), and setting the hearing thereon for  
11 October 29, 2008 (the "Motion to Dismiss").

12           6. On September 9, 2008, the Court entered in the First Action partial judgment in  
13 favor of McKesson Corporation and against Familiy whole Group, Inc. in the amount of \$747,474.09.

14           7. Pursuant to stipulation of the Parties, on October 7, 2008, the Court ordered the  
15 hearing on the Motion to Dismiss be continued until November 12, 2008, ordered that a Case  
16 Management Conference be set for the same day in both actions (the "Case Management  
17 Conferences"), and ordered that Familiy whole shall file any motion for leave to amend its  
18 Counterclaim in the First Action or its Complaint in the Second Action on or before October 22,  
19 2008.

20           8. On October 16, 2008, the Parties participated in a private mediation, wherein, the  
21 Parties reached a settlement of their respective claims and executed an Agreement and General  
22 Release (the "Agreement").

23           9. The performances arising under the Agreement are to be completed on or before  
24 January 23, 2009, and the effectiveness of the releases set forth therein accrue on January 23, 2009  
25 upon such performance.

26           10. The Parties believe it to be in their best interest to enter into this Stipulation and  
27 hereby stipulate and agree as follows:

28

## **STIPULATION**

11. Recitals 1 through 10 are incorporated herein by this reference and the Parties agree that the information recited above is true and correct.

12. The November 12, 2008 hearing on the Motion to Dismiss shall be taken off calendar subject to rescheduling if the performances under the Agreement are not completed.

13. The November 12, 2008 Case Management Conferences shall be taken off calendar subject to rescheduling if the performances under the Agreement are not completed.

14. All proceedings in the First Action and Second Action shall be stayed until January 23, 2009, unless otherwise stipulated by the Parties or ordered by the Court, including after application by one or more of the Parties.

DATED: October 22, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP  
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Nevada corporation

DATED: October 22, 2008

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By:   
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Delaware corporation and D&K HEALTHCARE  
RESOURCES LLC, a Delaware limited liability  
company, f/k/a D&K HEALTHCARE RESOURCES,  
INC., a Delaware corporation

III

## ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/27/2008

THE HONORABLE WAYNE D. BRAZ

*Wayne D. Brazil*  
THE HONORABLE WAYNE D. BRAZIL

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